

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SARA E. CROCKER,

Plaintiff,

CASE NO. 1:08-CV-1091

v.

HON. ROBERT J. JONKER

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

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ORDER APPROVING REPORT AND RECOMMENDATION

The Court has reviewed the Magistrate Judge's Report and Recommendation (docket # 12) and Plaintiff's Objections (docket # 13), and Defendant's Response to Objection (docket # 14). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, "[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified." 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997). Specifically, the Rules provide that:

The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED. R. CIV. P. 72(b)(3); *see also* 28 U.S.C. § 636(b)(1)(C). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981).

The Report and Recommendation recommends that the Commissioner of Social Security's decision to deny Plaintiff's claim for disability insurance benefits be affirmed. Plaintiff raises two objections, but neither of the objections undermines the conclusion of the Magistrate Judge. After a de novo review of the record, the Court accepts the Magistrate Judge's Report and Recommendation, and orders that the Commissioner's decision be affirmed.

Plaintiff Sara Crocker first objects to the Report and Recommendation on the basis that there was not substantial evidence for the Commissioner's decision because, she contends, the ALJ ignored the opinions of Tatyana Sigal, M.D., her treating physician. She further contends that the Commissioner is biased against mental impairments. The ALJ did rely properly on the treatment notes of Dr. Sigal, however, in reaching its conclusion. There was substantial evidence to support the ALJ's conclusion that Ms. Crocker's psychiatric conditions do not severely interfere with her ability to work, and Ms. Crocker has failed to show that the ALJ applied an incorrect standard of law or that his decision was unsupported by substantial evidence. *See Walters v. Comm'r of Soc. Sec.*, 127 F.3d 525, 528 (6th Cir. 1997).

Ms. Crocker's second objection is to the propriety of the ALJ's hypothetical question. She submits that the hypothetical questions submitted to the vocational expert were grossly inadequate because they failed to reflect the psychiatric impairments that she suffered as described by Dr. Sigal and Dr. Bradley. As the Magistrate Judge noted, however, Dr. Sigal's assessment conflicted with Dr. Sigal's treatment notes; accordingly, the ALJ properly relied on Dr. Sigal's treatment notes and the consultative examination. Additionally, the Magistrate Judge properly excluded Dr. Bradley's concerns because, in fact, Dr. Bradley did not express those concerns; the notes reflect that they were authored by Ms. Crocker's counselor, not Dr. Bradley. The ALJ therefore properly phrased a hypothetical question that included those limitations the ALJ concluded were credible. *See Blacha*

v. Sec'y of Health & Human Servs., 927 F.3d 228, 231 (6th Cir. 1990). Additionally, Ms. Crocker waived this argument by failing to support legal or factual evidence in support of it. *See McPherson v. Kelsey*, 125 F.3d 989, 995-96 (6th Cir. 1997).

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge, filed November 2, 2009, is approved and adopted as the opinion of this Court.

IT IS FURTHER ORDERED that the Commissioner's decision is **AFFIRMED**.

Dated: March 9, 2010

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE